

David Karl Gross, ABA #9611065
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, Alaska 99501
Telephone: 907.276.1550
dgross@bhb.com

Edward E. McNally, ABA #9203003
Marc E. Kasowitz (*Admitted pro hac vice*)
Hector Torres (*Admitted pro hac vice*)
Kasowitz Benson Torres LLP
1633 Broadway
New York, NY 10019
Telephone: 212.506.1700
emcnally@kasowitz.com
mkasowitz@kasowitz.com
htorres@kasowitz.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

KLOOSTERBOER INTERNATIONAL
FORWARDING LLC and ALASKA
REEFER MANAGEMENT LLC,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND
BORDER PROTECTION, and TROY A.
MILLER, U.S. Customs and Border
Protection Acting Commissioner, in his
official capacity,

Defendants.

Case No.: 3:21-cv-00198-SLG

DECLARATION OF MICHAEL K. TOMENGA

Pursuant to 28 U.S.C. § 1746, I, Michael K. Tomenga, declare as follows:

1. I am an attorney licensed to practice law in the District of Columbia since 1978.
2. From 1978 to 1984, I was employed as an attorney in the Office of Regulations and Rulings (OR&R) of the U.S. Customs Service, now called Regulations & Rulings and U.S. Customs and Border Protection (Customs), respectively.
3. During my employment with OR&R, I worked in the Carriers, Drawback & Bonds Branch; the Tariff Classification Branch; and the Penalties Branch.
4. I am a member of the law firm Neville Peterson LLP and practice in its Washington, DC office.
5. I have personal knowledge of the facts set forth in this declaration.
6. On October 1, 2021, on behalf of Kloosterboer International Forwarding LLC, and in accordance with 19 U.S.C. § 1618 and 19 C.F.R. Part 171, I submitted a Petition for relief against Customs penalty claims asserted in Jonesport Penalty Case Nos. 2021-0122-300235-01, 2021-0122-300301-01, and 2021-0122-300303-01. In accordance with our standard practice acceptable to Customs during the COVID pandemic and since the anthrax assault via U.S. Postal Service mail on officials in Washington DC in 2001, I filed a portable document format of the Petition and Exhibits by electronic mail (“email”) and sent a hard copy by FedEx to the Customs Fines, Penalties and Forfeitures Officer in Portland, Maine (“Portland FP&F Officer”).
7. I sent courtesy copies of the Petition and Exhibits by email to the Portland FP&F Officer’s supervisory officials, the Chief, Penalties Branch and the Director, Border Security and Trade Compliance Division, at Customs Headquarters. In addition, upon the

recommendation of the Portland FP&F officer, I emailed a courtesy copy to the email address for the Jones Act enforcement group at portlandmainejonesact@cbp.dhs.gov.

8. Attached is a true and accurate copy of the Petition and Exhibits 1-3 filed with Customs with the exception of a redaction of customer and vendor names that are the confidential business information and trade secrets of KIF.
9. Attached is a true and accurate copy of the email confirmations of the delivery of the Petition and Exhibits that I received. The Portland FP&F Officer advised me that he would be out of the office until next week and unable to respond by email to acknowledge receipt of a Petition filed before his return.
10. Attached is a true and accurate copy of the FedEx delivery label for the hard copy of the Petition and Exhibits sent to the Portland FP&F Officer.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.



Michael K. Tomenga

Michael K. Tomenga

Dated: October 1, 2021